

UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
(Northern California locations)

SENTINEL CREMATION SOCIETIES, INC., d/b/a  
THE NEPTUNE SOCIETY OF NORTHERN  
CALIFORNIA 1/

Employer

and

TEAMSTERS UNION LOCAL 665,  
TEAMSTERS AUTOMOTIVE & ALLIED  
WORKERS UNION, LOCAL NO. 665, IBT,  
AFL-CIO

Petitioner

**20-RC-17530**

**DECISION AND DIRECTION OF ELECTION**

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, as amended, a hearing was held before a hearing officer of the National Labor Relations Board; hereinafter referred to as the Board.

Pursuant to the provisions of Section 3(b) of the Act, the Board has delegated its authority in this proceeding to the undersigned.

Upon the entire record in this proceeding, the undersigned finds:

1. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.
2. The Employer is engaged in commerce within the meaning of the Act and it will effectuate the purposes of the Act to assert jurisdiction herein. 2/
3. The labor organization(s) involved claim(s) to represent certain employees of the Employer. 3/
4. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act. 4/
5. The following employees of the Employer constitute a unit appropriate for the purpose of collective bargaining within the meaning of Section 9(b) of the Act: 5/

All full-time and regular part-time assistant managers, caretakers, operators, pre-need counselors, phone center employees, field representatives, floaters and service directors employed by the Employer at its Belmont, Castro Valley, Chico, Emeryville, Fairfield, Grass Valley, Novato, Oakland, Sacramento, San Francisco, Santa Rosa, Stockton, and Walnut Creek, California locations; excluding all other employees, captains, pre-need counselors, guards and supervisors 6/ as defined in the Act.

**DIRECTION OF ELECTION**

An election by secret ballot shall be conducted by the undersigned among the employees in the unit(s) found appropriate at the time and place set forth in the notice of election to be issued subsequently, subject to the Board's Rules and Regulations. Eligible to vote are those in the unit(s) who were employed during the payroll period ending immediately preceding the date of this Decision, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off. Also eligible are employees engaged in an economic strike which commenced less than 12 months before the election date and who retained their status as such during the eligibility period and their replacements. Those in the military services of the United States may vote if they appear in person at the polls. Ineligible to vote are employees who have quit or been discharged for cause since the designated payroll

OVER

period, employees engaged in a strike who have been discharged for cause since the commencement thereof and who have not been rehired or reinstated before the election date, and employees engaged in an economic strike which commenced more than 12 months before the election date and who have been permanently replaced. Those eligible shall vote whether or not they desire to be represented for collective bargaining purposes by **TEAMSTERS UNION LOCAL 665, TEAMSTERS AUTOMOTIVE & ALLIED WORKERS UNION, LOCAL NO. 665, IBT, AFL-CIO.**

#### **LIST OF VOTERS**

In order to insure that all eligible voters may have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties to the election should have access to a list of voters and their addresses which may be used to communicate with them. **Excelsior Underwear, Inc.**, 156 NLRB 1236 (1966); **NLRB. Wyman-Gordan Company**, 394 U.S. 759 (1969). Accordingly, it is hereby directed that with 7 days of the date of this Decision 3 copies of an election eligibility list, containing the **full** names and addresses of all the eligible voters, shall be filed by the Employer with the undersigned who shall make the list available to all parties to the election. **North Macon Health Care Facility**, 315 NLRB No. 50 (1994). In order to be timely filed, such list must be received in the Regional Office, 901 Market Street, Suite 400, San Francisco, California 94103, on or before **July 9, 1999**. No extension of time to file this list shall be granted except in extraordinary circumstances, nor shall the filing of a request for review operate to stay the requirement here imposed.

#### **RIGHT TO REQUEST REVIEW**

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the **Executive Secretary, 1099-14th Street, NW, Washington, DC 20570-0001**. This request must be received by the Board in Washington by **July 16, 1999**.

Dated \_\_\_\_\_

at San Francisco, California

/s/ Alan B. Reichard  
Acting Regional Director, Region 20

- 1/ The Employer's name is in accord with the stipulation of the parties.
- 2/ The parties stipulated, and I find, that the Employer is a Delaware corporation with places of business in Northern California that is engaged in the business of providing cremation and other funeral services. During the 12-month period ending May 31, 1999, the Employer derived gross revenue in excess of \$500,000 and purchased goods and materials valued in excess of \$2,500 that were shipped to the Employer at its California locations directly from outside the State. Based on the parties' stipulation to such facts, it is concluded that the Employer is engaged in commerce and it will effectuate the purposes and policies of the Act to assert jurisdiction in this case.
- 3/ Daniel L. Lynch, a business representative for the Petitioner, testified that the Petitioner represents employees with respect to their employment relations with their employers and negotiates collective-bargaining agreements. It enforces those agreements through the filing of grievances and it has meetings at which its members participate in the affairs of the Petitioner. According to Lynch, the Petitioner has previously been certified by the Board as the exclusive collective-bargaining representative of employees at other funeral homes in the San Francisco Bay Area including Duggan's Funeral Home in Daly City, W.C. Laswell in San Francisco and Roller Hapgood in Redwood City. Based on Lynch's testimony, I find that the Petitioner is a labor organization within the meaning of the Act.
- 4/ The parties stipulated, and I find, that there is no contract bar to this proceeding.
- 5/ The Petitioner seeks to represent a unit comprised of all full-time and regular part-time assistant managers, caretakers, operators, pre-need counselors, phone center employees, field representatives, floaters and service directors employed by the Employer at its Belmont, Castro Valley, Chico, Emeryville, Fairfield, Grass Valley, Novato, Oakland, Sacramento, San Francisco, Santa Rosa, Stockton, and Walnut Creek, California locations. The parties have stipulated, and I find, that employees at the Employer's 16 operating facilities in the cities described above constitute an appropriate unit for collective-bargaining purposes. However, the Employer asserts that pre-need counselors should be included in the unit and the phone center employees who work at its Emeryville, California, location should be excluded from the unit. The Petitioner asserts the contrary view.

Background: The record reflects that Sentinel Cremation Societies, Inc. is owned by Stewart Enterprises, Inc. Stewart Enterprises, Inc. operates numerous funeral homes and cremation facilities all over the United States. The Western Division of Stewart Enterprises, Inc. includes its facilities in California, Washington, Oregon and Nevada. The Employer operates sixteen facilities in Northern California doing business as the Neptune Society of Northern California (herein called the Neptune Society). It also operates facilities in Southern California where it does business as

the Telephase Cremation Society. The facilities petitioned-for herein are located in Belmont, Castro Valley, Chico, Emeryville, Fairfield, Grass Valley, Novato, Oakland, Sacramento, San Francisco, Santa Rosa, Stockton and Walnut Creek, California and are all facilities of the Neptune Society. These facilities perform approximately 5,500 to 5,600 cremations a year.

The Employer is in the business of cremating and disposing of human remains and selling various products related thereto, including caskets, urns and memorabilia. It also sells services such as funeral/memorial services and the scattering of ashes at sea and on land. The Employer operates twelve sales offices, three crematories, a cemetery and a columbarium. It also has one vessel that is used to scatter ashes at sea. The Employer is supported by a phone center, located at its Emeryville location, which provides the services described below.

The Employer's Managerial Hierarchy. The Employer is headed by a director of operations whose office is located in San Ramon, California. Reporting to the director of operations are two area managers who work out of offices in Walnut Creek and Chico. Each of the area managers oversees several facilities. Reporting to the area managers are local managers, and about three or four pre-need managers who oversee only the pre-need counselors.

The Employer operates three crematories that are located in Emeryville, Santa Rosa and Sacramento, California. Each crematory has a location manager who is responsible for ensuring that the crematory is operated in accord with the Employer's safety and compliance procedures. The location manager schedules daily work; evaluates employees; and makes recommendations for annual wage increases, etc. As set forth below, the parties stipulated, and I find, that the location managers are statutory supervisors who should be excluded from the unit. There is also a manager who supervises the at-need counselors, field representatives at each location and a separate supervisor for the pre-need counselors as described below.

Crematory Operators. At each crematory, the Employer employs operators whose job is to cremate bodies. They also occasionally deal with family members of the deceased. The Employer's crematories operate 5 days a week. The operators work about 50 hours a week. They are licensed by the State of California. They are paid on an hourly wage of between \$10 and \$15 an hour depending mainly on the location of the crematory where they work. They fill out time sheets and can earn overtime. The location manager sets their schedule. The operators earn extra money by providing special services such as removing pacemakers from the deceased and setting facial features of the deceased when a family requests a viewing. This extra money ranges from a few hundred dollars to about \$3,000 a year. The operators wear casual clothes such as jeans.

Sales Offices: Pre-Need Counselors and At-Need Counselors. The Employer has 12 sales offices, some of which are freestanding and some of which are located in strip malls or office complexes. Most of the sales offices are about 900 to 1200 square feet in size and consist of a reception area with a desk for the manager and the at-need and pre-need counselors and a conference room where arrangements are made with families for both pre-need and at-need services.

At each sales office the Employer has a location manager and one or more at-need counselors, pre-need counselors and field representatives. Usually, there are 2 to 3 at-need counselors in each office. About half the offices also have a pre-need counselor with regularly scheduled work hours. Each office handles about 70 to 80 cases a month. The major functional difference between the pre-need and at-need counselors' job is that the pre-need counselors handle arrangements for cremations and other sales for families prior to a death occurring and the at-need counselors handle such arrangements and sales after a death has occurred.

At-Need Counselors. The at-need counselors work in the Employer's offices and report to the location manager. Their job is primarily to wait on clients who are dealing with a death and to handle the sales of the Employer's services and products to such clients. Specifically, they obtain the information necessary for the Employer to dispatch the field representative to remove the body. The at-need counselors contact the family and make an appointment for them to come into the office and make the final arrangements; sign all the authorizing paperwork; and discuss what the family wants to do for the final resting-place of the deceased. They ensure that the family is given a death certificate and that the remains of the deceased are returned to the family or that the family receives certification that the remains have been properly disposed of. The at-need counselors also handle obituaries and deal with the Social Security Administration, the county health department and the coroner's office. The Employer requires at-need counselors to become licensed funeral directors. Location managers are also required to be licensed funeral directors.

The at-need counselors at all locations work the same 8 a.m. to 5 p.m. schedule as established by Employer policy. Occasionally, they go outside the office to handle memorial services, deliver death certificates and the deceased's remains to clients. However, virtually all of their work time is spent in the office.

At-need counselors are paid on an hourly wage of between \$10 and \$14 an hour based on the location and volume of business of the office where they work. They are also eligible to earn commissions. The record reflects that in most of the Employer's offices, at-need counselors can sell pre-need products and services if pre-need counselors are unavailable. However, the manager of the Belmont office testified that at that location, at-need counselors are not allowed to sell pre-need contracts because they would be taking money away from the pre-need counselor

who works there. The record does not disclose which locations other than Belmont, if any, have a similar proscription on selling of pre-need contracts by at-need counselors.

At-need counselors earn a 5% commission on every pre-need contract they sell; a 15% commission on urns; and a 10% commission on caskets. The at-need counselors earn between \$22,000 and \$30,000 a year in wages. They also earn between \$500 and \$8000 a year in commissions. The record reflects that some at-need counselors have earned as much in commissions as in hourly wages during certain pay periods.

The record contains the testimony of employee Stacey Mason who has worked at the Emeryville phone center and as an at-need counselor at two locations (Chico and Castro Valley). Mason testified that she began working for the Employer at the Emeryville phone center four years prior to the hearing. She worked at the phone center for about two years and then transferred to the Employer's Chico office where she worked for a year. Then she transferred to the Employer's Castro Valley office where she currently works about a year prior to the hearing. Mason testified that she obtained her funeral director's license while working as an at-need counselor at the Chico location. According to Mason, she also wrote and sold pre-need contracts and went along with the field representatives to remove bodies on about four occasions during her tenure at the Chico location. At the Employer's Castro Valley location, Mason performs primarily at-need work. However, she also continues to sell pre-need contracts. While working at Castro Valley, she testified that she has handled one removal of a body.

Mason testified that the pre-need and at-need counselors at the Chico and Castro Valley offices all work together, taking messages for each other and setting appointments. She testified that the at-need counselors at both locations have completed pre-need contracts when pre-need counselors are unavailable and that they use the same rooms to meet with families.

According to Mason, she works at the Emeryville phone center about 20 to 40 times a year. She testified that there is no business interaction between the phone center and crematory operators but there is some social interaction between them in terms of sharing the same lunch room, rest rooms and facsimile machine.

Mason also substitutes at other Employer locations about twelve times a year filling in for absent employees. She earns \$11.07 an hour and usually earns about \$5,000 a year in commissions. She testified that there have been pay periods when her commissions almost exceed her salary.

The record reflects that the at-need counselors have regular telephonic contact with the phone center employees. Specifically, the counselors call the phone center at the end of each

day in order to forward their incoming calls to phone center employees. They also contact the phone center with regard to scheduling the boat that is used to scatter ashes and if they have a question about a death call that was handled by the phone center during the night. During the day, the at-need counselors may telephone the phone center to ask phone center employees to handle overflow calls if things are busy.

Pre-Need Counselors. As indicated above, the pre-need counselors deal with clients prior to a death having occurred. The contracts that they make with clients are different from those done by the at-need counselors. However, the record does not disclose the nature of these differences. The pre-need counselors are separately supervised by pre-need managers. There are four pre-need managers for the 16 Employer locations in the petitioned-for unit. The pre-need counselors work varying work schedules. Only about half of the Employer's offices have scheduled office hours for pre-need counselors. The pre-need counselors who have scheduled office hours only spend about half of their time in the office. They spend the remainder of their work time visiting the homes of clients. The pre-need counselors who have office hours use the same conference rooms, lunch rooms and bathrooms as the at-need counselors. The Employer does not require pre-need counselors to be licensed funeral directors. However, some of the Employer's pre-need counselors do hold such licenses.

Pre-need counselors are paid solely on a commission basis. Their earnings typically range between \$20,000 and \$50,000 a year. However, a few pre-need counselors have earned as much as \$70,000 in a year. The pre-need counselors earn a 10% commission on cremation services sold; a 15% commission on the sale of property; a 15% commission on the sale of urns; and a 10% commission on the sale of caskets.

When pre-need counselors work in the sales office, they answer the telephone and take messages for the at-need counselors and vice versa. Pre-need counselors can take information if a death call comes in and they can release death certificates to families. They can also dispatch field representatives to pick up bodies. At-need counselors can make appointments for pre-need counselors. In those cases where a death occurs after a pre-need counselor has spoken to a client but before a sale has been effectuated, the pre-need counselors turn the paperwork over to the at-need counselors employees to handle the case. There is some limited on-the-job training for pre-need counselors with regard to matters such as the release of death certificates. The Employer holds sales meetings that are attended by the pre-need counselors and pre-need managers. Typically, at-need counselors do not attend such meetings.

Phone Center Employees. At the Emeryville location, the Employer operates both a crematory and a phone center. The phone center handles calls for the 16 locations in the petitioned-for unit as well as 16 non-Employer operated funeral homes that are owned by Stewart Enterprises, Inc. The crematory and the phone center are

located in the same building at Emeryville but are separate operating centers with separate managers. However, they do share common restrooms, a lunch room and a facsimile machine. The record reflects that the phone center operates 24 hours a day.

The job of the phone center employees is to answer all calls that come in regarding the needs of client families. However, they do not handle calls involving the Employer's crematories. The types of calls handled by phone center employees include "at-need" calls when a person has died. In such cases, the phone center employee dispatches a field representative to remove the body. The phone center also handles pre-death or "pre-need" calls from individuals inquiring about how to establish a trust to handle arrangements after death. Phone center counselors do not write sales contracts. Rather, they merely take the information and relay it to the office in the area where the call is coming from. Phone center employees also take down membership data and input it into the computer and schedule the Employer's boat to scatter ashes. The record reflects that the Employer's phone center telephone system identifies where calls originate and that the phone center employees have a book containing pertinent information regarding each of the Employer's locations.

Phone center employees are eligible to transfer to any of the Employer's locations, including those in other states and in Southern California. However, the two or three former phone center counselors who have transferred have transferred to one of the other Employer offices involved in the petitioned-for unit. The phone center employees earn between \$10 and \$15 an hour and are eligible to earn overtime.

Field Representatives. The Employer also employs field representatives who transport bodies to the crematories for cremation; transport cremated remains; and transport inter-office mail. Field representatives are out of the office about half the time. Field representatives are not required to be licensed.

The Record Management Center. The record discloses that the Employer also operates a record management center located in San Ramon where it employs about 5 to 6 employees. The duties of the record management center employees consist of processing contracts for the pre-need sales staff. They also inform customers and pre-need and at-need counselors how much has been paid on a contract. Their primary contact with other employees is by telephone. No party contends that the record management center employees should be included in the unit.

Analysis. In making unit determinations, the Board has noted that there is nothing in the Act that requires that the unit for bargaining be the only appropriate unit, the ultimate unit or the most appropriate unit. Rather, the Act requires only that the unit be "appropriate". Overnite Transportation Co., 322 NLRB 723 (1996). A union is



therefore not required to seek representation in the most comprehensive grouping of employees unless “an appropriate unit compatible with that requested does not exist.” P. Ballantine & Sons, 141 NLRB 1103 (1963). Further, it is well settled that there is more than one way in which employees of a given employer may appropriately be grouped for purposes of collective bargaining. See General Instrument Corp. v NLRB, 319 F.2d 420, 422-423 (4<sup>th</sup> Cir. 1963), cert denied 375 U.S. 966 (1964).

The test applied by the Board to determine whether an employee shares a community of interest with other unit employees is whether there are (1) differences or similarities in wages, compensation and benefits; (2) whether that employee shares common supervision with other unit employees; (3) whether that employee has similar hours of work as other unit employees; (4) differences or similarities in qualifications, training and job skills; (5) job functions; (6) frequency of contact with other unit employees; (7) functional integration and interchange with other unit employees; and (8) bargaining history. See P.J. Dick Contracting, Inc., 290 NLRB 150, 151, 1988); Kalamazoo Paper Box Corp., 136 NLRB 134 (1962).

Pre-Need Counselors. Applying the foregoing principles to the pre-need counselors in the instant case shows that the pre-need counselors are paid solely on a commission basis whereas the at-need counselors are paid an hourly wage. While the at-need counselors receive a commission on the products and services they sell, the percentage they receive is less than that received by the pre-need counselors. The pre-need counselors have separate immediate supervision by pre-need managers while the at-need counselors and field representatives are supervised by the location manager. The pre-need counselors do not all work in offices like the at-need counselors and those who do work in offices have different schedules than the at-need counselors. The pre-need counselors are not required to be licensed funeral directors whereas the Employer does require the at-need counselors to be licensed funeral directors. While the pre-need counselors sell the same products and services as the at-need counselors, the record reflects that at some locations such as the Belmont office, the at-need counselors are prohibited from selling pre-need contracts. Further, the pre-need counselors make contracts with clients that are different from those made by the at-need counselors. In addition, only the pre-need counselors can sell property to clients.

While the pre-need counselors who work in an office work in the same office and use the same facilities and equipment as the at-need counselors and the two groups of employees sometimes handle each others telephone calls and clients, the record reflects that the pre-need counselors typically spend much more of their time (i.e., at least half) working outside the office while the at-need counselors work only in the office.

In view of the foregoing, I find that there are sufficient factors that differentiate the pre-need counselors from the other unit employees to warrant their exclusion from the unit. Thus, the record reflects that unlike the at-need counselors, the pre-need counselors are paid solely on a commission basis; have separate supervision and different qualifications from the at-need counselors; and have different work schedules from the at-need counselors. Moreover, unlike the at-need counselors, the pre-need counselors spend a substantial portion of their work day working outside the Employer's offices. In these circumstances, I find that the pre-need counselors share a community of interest that is separate and distinct from the at-need counselors. Accordingly the pre-need counselors will be excluded from the unit.

Phone Center Employees. With regard to the phone center employees, I find that they have a sufficient community of interest with the employees in the petitioned-for unit to warrant their inclusion in the unit. Thus, the record reflects that like the employees in the petitioned-for unit, the phone center employees are hourly paid and they earn a pay rate similar to the crematory operators and the at-need counselors. The phone center employees have daily telephonic contact with the at-need counselors and the record reflects that phone center employees have transferred to other office locations of the Employer. The record also reflects that at-need counselors have worked at the phone center to fill in for absent employees. In addition, the phone center employees have contact with the operators at the crematory where they work because they share the same lunchroom, bathrooms and facsimile machine. They also have contact with field representatives in that they may dispatch them to remove the body of a deceased. In these circumstances, I find that despite their separate immediate supervision, the record evidence establishes that the phone center employees share a sufficient community of interest with the at-need counselors and other employees in the petitioned-for unit to warrant their inclusion in the unit. Accordingly, they will be included in the unit.

- 6/ The parties stipulated, and I find, that the managers and captains at each location are statutory supervisors who should be excluded from the unit.

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